IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1022 OF 2006

Mohamed Zakaria ...Petitioner.

Versus

Madhav T. Khangate ...Respondent.

Shri A.B.Tajane for the Petitioner.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 22nd FEBRUARY, 2006.

P.C. :

1. Heard Shri Tajane - learned Counsel appearing for the petitioner.

2. Perused the order passed by the Trial Court on the application for amendment moved by the petitioner-plaintiff in Special Civil Suit No.807 of 1996.

3. The application for amendment sought to introduce a case for specific performance of the agreement which is subject matter of this Suit. The application for amendment proceeds on the basis that the averments with regard to readiness and willingness being already made and that Paras 13 & 14 of the plaint incorporating such pleas, even at the stage of final argument, relief can be prayed by amending the plaint.

4. The respondent opposed this application and the trial Court has rejected it on three grounds; (1) that it is belated and made at the stage of final arguments; (2) that the cause of action would be changed in its entirety; and (3) that there is no satisfactory explanation as to why an amendment of this nature is being made at such a late stage.

5. The Court below was in no error in accepting the pleas raised on behalf of the original defendant, who opposed the application for amendment. The Suit is filed for cancellation of the agreement and refund of money.

6. With the assistance of Shri Tajane, I have perused the plaint and in the plaint in Paras 12 & 13 a clear case is made out of misrepresentation and defect in title and the plaintiff being made to sign some documents by defendant, although, he being dis-entitled from transferring right, title and interest in anybody’s favour. Although, in Para 13 it is claimed that the Suit is filed for specific performance of the contract or return of consideration and in Para 14 an averment is made that the plaintiff is ready and willing to pay the proportionate price or costs, in my

view, it is not possible to read these averments in isolation. The entire case is that the petitioner-plaintiff is misled by the defendant-respondent into entering the suit agreement and that it is vitiated on account of misrepresentation of material facts and fraud. Therefore, the defendant is not liable to retain the benefit, viz., the amount of Rs.75,000/- thereunder. Now, seeking specific performance of such an agreement is nothing but changing the entire basis of the Suit and the amendment is rightly rejected. That apart, the matter is at the final stage of argument and no explanation of whatsoever nature is forthcoming as to why the petitioner-plaintiff could not move an application when the Suit was pending for nine long years in the trial Court. The application, therefore, is rightly dismissed. The discretion exercised in rejecting the application cannot be said to be arbitrary or perverse so as to call for interference in Writ jurisdiction. Petition dismissed.

6. The judgments relied upon by the learned Counsel are not applicable, when the factual position, as noticed above, is taken into consideration.

(S.C.DHARMADHIKARI,J.)